

1.94 De
P.14

U. S. DEPARTMENT OF AGRICULTURE
Division of Marketing and Marketing Agreements
Dairy Section

Prepared for the information
of milk market administrators
and other cooperators.

7
Developments in the

Boston Milk Marketing Program

RECEIVED
FEB 15 1939
U. S. Department of Agriculture

Preliminary injunctions signed by Judge Elisha H. Brewster were obtained by the Federal Government in Federal District Court of Massachusetts January 18, 1939, against 20 milk handlers to enforce compliance with the Federal Boston order, as amended. In a previous action on this, District Judge Sweeney had issued a preliminary injunction against 31 other handlers to enforce their compliance with the Boston order.

Judge Brewster declared in his opinion on the current injunction:

"In view of recent adjudications in this Circuit, it must be assumed that the amended Agricultural Adjustment Act meets the test of constitutionality and that the amended Order No. 4 (Boston) is a valid exercise of the power conferred upon the Secretary of Agriculture, and a temporary mandatory injunction may properly issue to enforce compliance with the order.

"The more difficult question is whether the regulation may be lawfully applied to the defendants whose business is intrastate, unless the fact that in emergencies they augment their local supply by purchases from others engaged in interstate handling is enough to change the character of their business. It would not follow that intrastate handlers were not amenable to the order. It has been so decided in at least five of the twenty-nine cases decided by Judge Sweeney.

"This result is not necessarily inconsistent with the case decided in 1935 in which the court held that a similar plan for regulating the milk industry in the Greater Boston area was not authorized by statute. The principal ground upon which the decision turned was that the license brought within its ambit intrastate activities, which the statute did not permit. Since that time, legislation and decisions have worked material changes.

"The statute upon which Order No. 4 is based extends to the handling of such commodities which directly burdens, obstructs, or affects interstate or foreign commerce in such commodity or product. That Congress may thus extend the field of Federal regulation is no longer a matter of doubt.

"It may well be, that if a substantial amount of milk is distributed in the Boston area outside of the regulation, it will seriously interfere and adversely affect the regulation of interstate handling of milk undertaken by the Secretary of Agriculture.

"Judge Sweeney's action in issuing a temporary injunction has been sustained by the Circuit Court of Appeals, which made no exception with respect to the defendant who claims to be engaged only in intrastate dealings."

The fact that the majority of the handlers, by volume of milk handled, under the Federal Boston order were paying the prices as set by the order as amended, either voluntarily or under Court order, gave the 20 non-complying handlers a decided economic and competitive advantage, according to the order of the Court. Nine of the handlers refused to file any reports required under the order. These conditions were disrupting the orderly marketing of milk and threatening the milk supply of the Boston marketing area, the order of the Court points out.

The injunction allows 10 days from the date of issuance for the 20 non-complying handlers to pay into the registry of the Court payments due from August 1, 1937 to January 18, 1939.

The 20 handlers also are required under the injunction to:

1. File with the Market Administrator all required reports, and make to the Market Administrator all payments which become due as their share of the expense of the administration of the order.

2. Make to the Registry of the Court (1) equalization payments in connection with the market-wide pool to equalize costs of milk to handlers and provide uniform minimum prices to producers; and (2) payments which may become due to supply marketing services to non-association producers.

The Federal Boston order originally became effective February 9, 1936. It was suspended August 1, 1936 upon an adverse ruling in the Federal District Court in Massachusetts, but was reinstated with amendments August 1, 1937 after the District Court decision was reversed June 16, 1937 in an unanimous opinion of the Circuit Court of Appeals for the First Circuit.

The payment required to be made by the 20 non-complying handlers totals \$294,773.71, which brings the total amount payable to the Court by all 51 handlers for equalization and marketing services under these injunctions to approximately \$3,000,000.

Amendments to the marketing agreement and order program became effective January 16, 1939. Handlers of about 85 percent of the volume of milk in the marketing area, including handlers of about 70 percent of the milk distributed by the 31 handlers then under Court order, signed the amended agreement. About 82 percent of the producers voting in a referendum January 6 on the amended Federal order (embodying the terms of the agreement) cast favorable ballots.

The temporary injunction sought October 1, 1937, against 31 handlers to compel compliance, was upheld June 24, 1938 in the Circuit Court of Appeals for the First Circuit, requiring marketing administration assessments to be paid to the Market Administrator.

A supersedeas allowing handlers to deposit their equalization and marketing service money into Court was also continued. The decision was not appealed by either side and further action will depend upon the outcome of the permanent injunction.

The hearing of the case for the permanent injunction commenced January 4, 1937, and was finally argued before Judge Sweeney on February 1 and 2, 1939. Regardless of the decision, the case will likely be appealed to the Circuit Court and go from there to the Supreme Court. The appeal should be heard by the Circuit Court during April, and then by the Supreme Court in the fall.

Important steps in the litigation concerning the temporary injunction are as follows:

October 1, 1937 - Government filed suits seeking temporary injunctions against 31 handlers to compel compliance.

November 30, 1937 - Temporary injunction was issued by Judge Sweeney against all handlers named in suits filed by the Government on October 1. Decision required full compliance with the order.

December 5, 1937 - Order for full compliance was modified by Judge Bingham to allow handlers to deposit their equalization and market service money in court. Temporary injunction was sustained, however, in requiring all reports to be made according to the order, and in requiring payments of the market administration assessment to the Market Administrator.

This supersedeas was to continue until the full Circuit Court could hear the arguments.

January 3, 1938 - Petitions filed against those in contempt of court, because they had not made the payments required under the order, were heard by Judge Sweeney. Action on these petitions was continued from time to time until the middle of January when all defendants had complied with the injunction or satisfied the Court with their efforts to comply except one who was adjudged in contempt and fined \$1,000.00.

February 4, 1938 - Second series of hearings on petitions against those in contempt of court commenced.

Result - Seven of the defendants came into compliance with the injunction before the hearing. All other defendants came into full compliance or satisfied the Court of their efforts to do so except three. One defendant was fined \$600.00 (the same defendant who previously had been fined \$1,000.00), a second \$1,000.00, and a third \$2,000.00.

April 29, 1938 - Circuit Court heard arguments on the appeal of handlers concerning the supersedeas granted by Judge Bingham.

June 24, 1938 - Circuit Court handed down decision upholding temporary injunction granted by Judge Sweeney. A supersedeas similar to the one granted by Judge Bingham was also continued. This case was not appealed.

Important steps in the litigation concerning the permanent injunction are as follows:

December 15, 1937 - Wm. B. Loughlin was named as special master to take evidence and make findings of fact with respect to the petition for a permanent injunction.

January 4, 1938 - Hearings concerning permanent injunction began before the special master.

April 16, 1938 - Oral testimony before the master was completed.

Summer 1938 - Attorneys for both sides prepared proposed findings of fact.

September 9, 1938 - Proposed findings of fact were presented to the master. Handlers asked for additional time for preparation. Extension was granted to September 24.

September 24, 1938 - Master received all material necessary on which to base his report to Judge Sweeney.

January 27, 1939 - Master made his report to Judge Sweeney.

February 1 - 2, 1939 - Case argued before Judge Sweeney.

